

PATRICK PORGANS & ASSOCIATES, INC.

GOVERNMENT REGULATION

RESOURCE CONVERGENCE

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FAX COVER LETTER

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1/20/04

SENT TO: LES GROBER, CHIEF, SJR TMDL UNIT

AFFILIATION: CVRWQCB

Fax No: (916) 464-4800

TELE. No: (916) 464-4851

SENT BY: PATRICK PORGANS

CONFIRMATION: YES ☒ No ☐

RE: REVISED DEADLINES FOR COMMENTS FOR THE PUBLIC REVIEW DRAFT BASIN PLAN AMENDMENT STAFF REPORT AND TECHNICAL TMDL FOR THE SALT AND BORON DISCHARGES INTO THE SAN JOAQUIN RIVER

TO: MR. GROBER

This fax transmission is in response to the CVRWQCB's request for public comments for the "Draft Basin Plan Amendment Staff Report and Technical TMDL for the Salt and Boron Discharges into the San Joaquin River." As stated during our telephone conversation on Jan. 15, 2004, Porgans & Associates (P&A) had not received the information package sent out by the Regional Board pertaining to this matter. Apparently, P&A were inadvertently dropped from the mailing list. Needless to say, the late notification will severely limit our comments, as time does not permit us to do so. Albeit, the record will support the fact that P&A has been actively involved in the agricultural drainage/runoff, water quality impairment, and salt banking and loading in the valley and the related impacts to the trust resources of the State. (Please refer to Attachments and Refer to CVRWQCB and SWRCB files.)

Porgans & Associates General Comments to the List of Issues Contained in CVRWQCB's Staff Report:

1. TMDL should propose water quality objectives upstream of Vernalis

Initial Response: Not just establish, but enforced. How about enforcing the existing standard already in place downstream of Vernalis.

2. Use of New Melones Reservoir for dilution is unreasonable use of water

Initial Response: Use of the public's water to irrigate lands without adequate drainage facilities and/or with known drainage problems should be the focus of what constitutes unreasonable use of water; however, this is an issue that P&A has repeatedly petitioned the State to deal with, but to no avail.

4. TMDL should consider groundwater control

Initial Response: Concur. We will provide specific comment in the future.

6. Technical basis is not sound (source analysis, models, etc.)

Initial Response: The record indicates that ALL of the "responsible contributors to the SJR self-imposed drainage dilemma have had decades to resolve all of the technical and related issues of concern. Simply stated, they willfully

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Initial Response: The record indicates that ALL of the "responsible contributors to the SJR self-imposed drainage dilemma have had decades to resolve all of the technical and related issues of concern. Simply stated, they willfully

neglected to obtain the needed technical information, and focused more on how to justify the irrigation of lands that are not sustainable.

7. Proposed implementation lacks specificity

Initial Response: This tactic should not come as a revelation to any party remotely familiar with the CVRWQCB's and the drainers' modus operandi. In fact, it is consistent with their creation of a crisis syndrome and then an at "ground zero" attempt to assuage the public into believing that they are finally going to "manage" the self-imposed crisis.

8. Options identified for implementing U.S. Bureau of Reclamation's load allocations are inappropriate

Initial Response: P&A concurs. We will provide additional comments at a future date. [Refer to attached letters.]

9. Timeline for implementation is unreasonable

Initial Response: The "ballpark" timeline which Mr. Grober alluded to, during our telephone conversation, is conservatively between eight (8) and twenty 20 years to meet the load limits — REALLY!!! In light of the fact that California acknowledges that it has and had a drainage problem in the SJV in the 1890, which was repeatedly referred to prior to and subsequent to the development of the State's two major water projects: i.e., the federal Central Valley Project and the State Water Project. The only thing that may be unreasonable about the timeline is that it is several decades behind schedule, the loads got beep on doubling every five years. The deplorable condition of the SJR is the direct result of the CVRWQCB and the State Water Resources Control Board blatant failure to fulfill their respective "public trust duties" to protect the waters of the State. Instead they chose to serve the political vested interest — major agricultural consortium who rule the valley.

10. Timely Completion of TMDLs

Initial Response: At this point timely completion is not possible in my life time.

Staff Report — Item 20 on page 10:

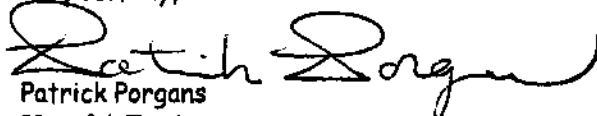
Delayed adoption of this and other TMDLs could put the Regional Board at risk of losing funds that support TMDL development. TMDLs, when developed and adopted, fulfill the State's obligation to implement the Clean Water Act; completion also facilitates the improvement of water quality in waters of the State. Use of federal money to develop TMDLs therefore assist the State in protecting water quality.

Lack of information, uncertainty, and partial solutions are not adequate justification for delaying completion and adoption of TMDLs. The Clean Water Act requires that TMDLs be developed with the best information available and that they can be phased, if necessary.¹

Initial Response: Now, that there is a potential threat of the CVRWQCB losing Clean Water Act funding, the Regional Board contends that there is no more room for time delays, with the exception of the eight to twenty years.

Please enter P&A comments into the record, and keep us apprized as this "process" continues. Thank you.

Respectfully,



Patrick Porgans

PP:sp fnl: 1 CVRWQCB/basinplan/Fax2004

Attachments

¹CVRWQCB's Proposed Amendment to the Sacramento River and San Joaquin River Water Quality Control Plan for the Control of Salt and Boron Discharges into the San Joaquin River — A Continuation of the Dec 2003 Workshop.

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WATER RESOURCE CONVERGENCE

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P.O. Box 1713, W. Sacramento, CA 95691

To: Regional Director, U.S. Fish & Wildlife Service
 Art Baggett, Chairman, State Water Resources Control Board
 Chairman, Central Valley Reg. Water Quality Control Board

From: Patrick Porgans & Associates

Hand Delivered

RE: Formal Request that the U.S. Fish and Wildlife Service Pursue Administrative Relief Through the Central Valley Regional Water Quality Control Board and the State Water Resources Control Board to Compel the U.S. Bureau of Reclamation et al to Cease Violating the Selenium Objective for the Wetland Channels, a Source of Water for the San Luis National Wildlife Refuge Complex, CA., Which Threatens Public Trust Resources and Permitted Water Right Usage

1 Porgans & Associates (P&A) is formally requesting the U.S. Fish & Wildlife Service (USFWS) to pursue administrative relief
 2 through the Central Valley Regional Water Quality Control Board (CVRWQCB) and the State Water Resources Control Board
 3 (SWRCB) to compel the U.S. Bureau of Reclamation (USBR), San Luis & Delta Mendota Water Authority (SL&DMWA), and
 4 all other Central Valley Project (CVP) water contractors to comply with the 2 ppb selenium wetland channel water quality
 5 standard/objective for the protection of aquatic resources and to cease impairing the Service's permitted-water right for
 6 Salt Slough/wetland channels, which has and continue to pose a threat to public trust resources within the Grassland Bypass
 7 Project (GBP) area and the San Luis National Wildlife Refuge Complex (SLNWRC).

8 Synoptic Reflection of the USBR's Ongoing-Unaccountable Destruction of Public Trust Resources:

9 The USBR is "responsible" for administering the federal Central Valley Project (CVP). The USBR is the single largest provider
 10 and purveyor of water in California, exporting on average four-million acre-feet of water from the Sacramento-San Joaquin
 11 Delta, primarily to its CVP agricultural contractors in the San Joaquin Valley (SJV) service area. The historical record attests
 12 to the fact that the USBR is rife with conflicting interests and self-serving directives as water purveyor and custodian of the
 13 public's resources. The USBR's conflicts and/or self-serving directives are rendering it ineffective in reconciling its intrinsic
 14 regulatory, administrative and contractual and public trust mandates. Its "Catch-22" quandary is compounded by a fragmented
 15 regulatory and self-serving administrative process that attempts to maintain a status quo profile when confronted with one of
 16 its own self-induced resource-related crises. Ironically, during such episodes the USBR tends to have a preoccupation with
 17 image-related damage control geared towards reasserting its commitment to the protection of its water contractors at the
 18 expense and to the demise of trust resources. This conflict of interest is illustrated by some of the following examples:

19 ① The USBR and its respective CVP water contractors are the primary parties responsible for the massive
 20 contamination and deplorable condition of the surface and ground water throughout the entire San Joaquin
 21 Valley (SJV). This condition was graphically evidenced in a U.S. Environmental Protection Agency's (EPA) June 1997
 22 National Watershed Characterization, Index of Watershed Indicators, which lists the SJV as a "More Serious Water
 23 Quality Problems - High Vulnerability" area. According to EPA's map/index, the SJV is the single largest
 24 contiguous high water quality vulnerable area in the United States. The SWRCB's record points to the discharge
 25 of agricultural drainage water as the primary source of the degradation of the SJR and the ongoing demise and
 26 destruction of the San Francisco Bay-Sacramento-San Joaquin Delta Estuary. (Refer to Attachment 1.)

27 ② The USBR's and contractors' respective actions are also a primary contributing factor to 120 miles of the San Joaquin
 28 River (SJR) classified as a water quality impaired body by the SWRCB.

29 ③ Water deliveries from the CVP are the primary factor contributing to water quality degradation in the wetland water
 30 supply channel, a source of water for the SLNWRC, and exceedences of EPA's 2 ppb selenium water quality standard
 31 for the protection of aquatic life, including wildlife refuge water supply, which threatens public trust resources and
 32 permitted water right usage. According to the CVRWQCB, the USBR has not been cited for violating the 2 ppb
 33 selenium standard/objective to protect aquatic resources.

To: Regional Director, U.S. Fish & Wildlife Service
Art Baggett, Chairman, State Water Resources Control Board
Chairman, Central Valley Reg. Water Quality Control Board
From: Patrick Porgans & Associates

Nov 12, 2002

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Re: Formal Request that the U.S. Fish and Wildlife Service Pursue Administrative Relief Through the Central Valley Regional Water Quality Control Board and the State Water Resources Control Board to Compel the U.S. Bureau of Reclamation et al to Cease Violating the Selenium Objective for the Wetland Channels, a source of water for the San Luis National Wildlife Refuge Complex, CA., Which Threatens Public Trust Resources and Permitted Water Right Usage

- 1 ④ Evidence given at the SWRCB's Bay-Delta Water Right hearings also attest to the fact that the USBR/CVP are
2 primarily responsible for the "doubling of salt loads every five years" in the SJV resulting from water deliveries and
3 agricultural drainage.
- 4 ⑤ The San Luis Unit of the CVP supplies water to the Westland Water District (WWD). The WWD is the single largest
5 water district in the United States. In the 1980's WWD was the source of the selenium-laden agricultural drainage
6 return flows responsible for the destruction of tens-of-thousands of migratory birds at the Kesterson National Wildlife
7 Refuge. The Kesterson debacle was the subject of a SWRCB hearing/decision (WQ 85-01), that was promulgated
8 not by a government entity, rather via a petition by a private citizen, who appealed a CVRWQCB decision that
9 essentially attempted to downplay the severity of the government-induced selenium-agricultural drainage catastrophe.
10 Ironically, in the SWRCB's Order No. WQ 85-01 issued a Cleanup and Abatement Order to the USBR for Kesterson
11 Reservoir, a 1,280 acre evaporation facility consisting of 12 ponds, requiring appropriate action to mitigate the any
12 nuisance condition caused by the operation of Kesterson Reservoir. However, the exception of the Cleanup and
13 Abatement Order, there is no record of the SWRCB holding the USBR accountable for violating water quality
14 standards. Ironically Kesterson and the San Luis Drain were not shut down by the SWRCB, they were closed by an
15 order from the Secretary of the Interior. **The USBR was not held accountable for the deaths of those birds as it
16 was not pursued as a Migratory Bird Treaty Act violation by the USFWS.**
- 17 ⑤ In the late 1980's and early 1990s, the USBR illegally exported hundreds-of-thousands acre-feet of water from the
18 delta, in violation of the terms and conditions of its water right permits.¹ SWRCB's Exhibits 19 and 20, (Summary of
19 Recent Decision 1485 Violations), documented over 200 days of violations between Water-Year 1998 through Water
20 Year 1992. (Refer to Attachments.) The SWRCB's record also states that the USBR and the California Department
21 of Water Resources (DWR), collectively illegally impounded and/or exported approximately 325,000 acre-feet of water
22 during that period, valued at \$29,000,000.00. P&A's fought for three years to have the SWRCB hold that hearing to
23 hold the USBR and DWR accountable for violating the terms and conditions of their respective water right permits.
24 Albeit, the **SWRCB held the hearing, documented the water quality violations, violations of their respective**
25 **water right permits and the illegal water export, but opted not to take an enforcement action against either**
26 **the USBR or DWR.** The records also prove that the governments' illegal water exports contribute greatly to the
27 decline, massive destruction and subsequent listing of certain aquatic species as endangered. **Ironically, the USBR**
28 **was not cited for the destruction and/or "take" of the fisheries, as is normally required by the provisions of**
29 **the federal Endangered Species Act.**
- 30 ⑥ The CVRWQCB reports document the fact that the USBR's groundwater sumps discharges into the Delta Mendota
31 Canal (DMC), have exceeded California's hazardous waste threshold for selenium (1,000 ppb). However,
32 according to Dennis Westcott, Eng., CVRWQCB the USBR has not been cited for this ongoing hazardous
33 waste discharge into the DMC, a source of water for the wetlands.
- 34 ⑦ In 2002, an estimated 33,000 fish were killed on the Klamath/Trinity River system (some of which are state/federally
35 listed as threatened species) resulting from a USBR water-related management issue. P&A contacted the USBR to
36 ask if it had been cited for the fish kill. USBR's spokesperson said, no, as no one knows who, if anyone, is at fault.
- 37 The USBR's ongoing contribution to the impairment of the public's waters, resulting from agricultural drainage return flows into

¹ Public Hearing, State Water Resources Control Board, Division of Water rights, Public Hearing, Subject: Consideration of Compliance with Water Right Requirements for the Sacramento-San Joaquin Delta and Suisun Marsh, Nov. 20, 1992.

To: Regional Director, U.S. Fish & Wildlife Service
Art Baggett, Chairman, State Water Resources Control Board
Chairman, Central Valley Reg. Water Quality Control Board

Nov. 14, 2002

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From: Patrick Porgans & Associates

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Re: Formal Request that the U.S. Fish and Wildlife Service Pursue Administrative Relief Through the Central Valley Regional Water Quality Control Board and the State Water Resources Control Board to Compel the U.S. Bureau of Reclamation et al to Cease Violating the Selenium Objective for the Wetland Channels, a source of water for the San Luis National Wildlife Refuge Complex, CA., Which Threatens Public Trust Resources and Permitted Water Right Usage

1 the rivers and Bay-Delta Estuary, and the destruction of fish and wildlife trust resources are without question unquantifiable;
2 however, there is no question regarding its magnitude and/or severity of devastating impacts, which are despicable,
3 unconscionable, contemptible, inexcusable, out-of-control and heretofore without meaningful regulatory accountability. The
4 record indicates it is time for the USBR to be held accountable and the wetland channels, a source of water for the SLNWRC
5 is a an appropriate place to initiate a compliance/enforcement action.

6 Supportive Documentation:

7 **Federal government's failure to meet wetlands selenium water supply objective:** This letter is being sent to reiterate
8 P&A's longstanding concerns regarding the USBR's, SL&DMWA's, Central Valley Project (CVP) water contractors et al's
9 ongoing exceedences of the 2 ppb selenium wetland water supply objective. Meeting this objective was one of the selling
10 points (deliverables) upon which the GBP was premised. Since the inception of the GBP, P&A has stated its concerns and
11 opposition to the use of the San Luis Drain for the purposes of transporting selenium-laden agricultural subsurface drainage
12 as well as tail, tile and storm water from an area of approximately 97,000 acres in the Grassland Watershed (Drainage Project
13 Area) to Mud Slough (north), a tributary of the San Joaquin River. The project uses the lower 28 miles of the San Luis Drain,
14 which is owned by the USBR, and operated under a use agreement by the San Luis & Delta Mendota Water Authority.

15 **Phase I of the GBP was besieged with a myriad of problems, miscalculations, exceedences of load limits and /or of**
16 **the 2ppb selenium water objective in the wetland water supply channels.** The CVRWQCB monitoring reports substantiate
17 numerous exceedences of the 2ppb water quality objective between 1996 and 2002 in the wetland channels.

18 *Selenium concentrations greater than 2ug/L occurred sporadically in the wetland water supply channels,*
19 *with the majority of elevated concentrations during February, March, and April. Elevated concentration*
20 *in the supply channel may be due to a number of factors including elevated selenium levels in supply water,*
21 *inflows from agricultural subsurface drainage sources outside of the DPA, and local sources such as ground*
22 *water seepage and surface return flows. The cause of the elevated concentrations in the wetland water*
23 *supply channels are being investigated by Regional Board staff and local water agencies. Results of early*
24 *investigation have been published separately (Chilcott, 2000b and Eppinger, et al., 2002 draft).*

25 **USBR water major factor in Selenium Exceedences:** Supply water to the wetlands is predominately provided from the
26 Central California Irrigation District Main Canal and the Delta Mandota Canal. According to the CVRWQCB's reports elevated
27 levels of selenium into those water sources comes from sumps, groundwater pumping and runoff. Another factor contributing
28 to selenium loading is attributed to the practice of "blending" higher quality water with poorer quality drainage water. After
29 nearly a decade of studies, attempting to quantify and qualify sources of selenium contributing to the exceedences in the
30 wetland supply, there is no question source water provided by the USBR is a major factor. This finding was not a revelation
31 to P&A, in fact, this was always a given. However, having had the opportunity to observe the USBR's "performance and
32 conduct" over a period of 30 years, it came as no surprise to P&A that the USBR could not overtly concede to the source-
33 selenium contamination connection.

34 Notwithstanding, P&A has made it a point to keep apprized of the plethora of shortcomings, data inconsistencies, selenium
35 load and/or water quality exceedences, and related incongruities attributable to the USBR's "handling" of the GBP, which the
36 record will attest it has documented in detailed. One source of such documentation can be found n P&A's petition to the

² CVRWQCB, Staff Report, Agricultural Drainage Contribution to Water Quality in the Grassland Watershed of Western Merced County, California: October 1998 — Sept. 2000, Jan. 2002 Draft., p. 2.

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1 SWRCB, wherein we appealed the CVRWQCB's approval of the waste discharge requirements for the GBP.³ Please refer
2 to your file copy of P&A's petition for all of the specifics.

3 **In the Mid-1990s P&A Suggested that the USFWS File a Formal Complaint with the CVRWQCB and SWRCB for**
4 **the USBR et al's violations of the Services water right permit for the wetland channels:** In the very early stages
5 of the GBP proposal, in the mid-1990s, P&A suggested to the USFWS's Sacramento Office that it file a formal complaint with
6 the CVRWQCB and the SWRCB against the USBR et al for impairing the Service's water right permits in the wetland channels.
7 At that time, the USFWS notified the CVRWQCB of its concern for the wetlands and selenium sources and/or exceedences;
8 however, it did not make a formal regulatory request/action to ensure compliance of the selenium objective for the wetlands.
9 Seven years have passed and the selenium exceedences in the wetland channels continue, placing the public trust resources
10 at risk. In the ensuing period, the USBR's contractors and other agriculturalists within the drainage project area have been
11 able to enjoy the benefits of federally subsidized water, obtained a 10 to 15 year grace period wherein they can exceed the
12 5ppb selenium objective promulgated by the EPA for the SJR and conduct business as usual.

13 **GBP is the Quintessential Stop-gap measure:** Since its inception, P&A has stated for the record that the GBP is nothing
14 more than a stop-gap-measure (salt banking) by the government and its water dependents to sanction the **unreasonable use**
15 of the public's water resources and promote unsustainable agricultural practices, while they are allowed to exceed federal
16 selenium objectives and continue to contribute to the destruction of public trust resources and the degradation of the surface
17 and ground waters of the state. The record also attests to the fact that P&A has consistently notified the USFWS, USBR⁴,
18 CVRWQCB⁵ and the SWRCB⁶ board/staff of our concerns relating to the threat posed by elevated levels of selenium in the
19 wetland channels resulting from agricultural/drainage activities. During the SWRCB's Bay-Delta "Water Rights" proceedings,
20 P&A emphasized to the SWRCB the need to include language in Water Right Decision 1641 a requirement that the USBR's
21 water rights permits address the USBR's need to develop a long-term solution to the self-imposed agricultural drainage
22 problem prevalent within the CVP's SJV, serviced area. The following are excerpts from D-1641:

³ Patrick Porgans & Associates Petition to Request that the State Water Resources Control Board Rescind the Central Valley Regional Water Quality Control Board's July 24, 1998, Decision to Approve Waste Discharge Requirements No. 98-171 for the San Luis & Delta-Mendota Water Authority and United States Department of the Interior, Bureau of Reclamation for the Grassland Channel Project, and that the State Board Schedule a Formal Hearing, August 22, 1998.

⁴ P&A's letter to Roger Patterson, Regional Director, USBR, Attention Laura Allen, Deputy Director, Environmental Affairs Division, Re: Submittal of Written Statements to Correct the Addendum to the Transcription of Flipchart Notes for the GBP Oversight Committee's Jan. 25, 1999 Meeting. Sacramento, CA., Feb. 11, 1999.
P&A's Fax to Mike DeJamore, USBR, Fresno Office, Fax No: 559 487-5130, Re: Detailed List of Financial Information Porgans & Associates Requested at the Oversight Committee Meeting, February 11, 1999.

⁵ P&A's Fax to Rudy Schnagl, Engineer, CVRWQCB - Sacramento (Fax No: (916) 255-3015), Re: Porgans & Associates Opposition to the San Luis & Delta Mendota Water Authority and U.S. Department of the Interior, Bureau of Reclamation, Grassland Bypass Project (Phase II), Fresno and Merced Counties - Consideration of New Waste Discharge Requirements, and Re-Submittal of Comments to the Grasslands Bypass Project Environmental Impact Statement/Report, 17 pages, Sept. 4, 2001.

Nov. 14, 2002

5

To: Regional Director, U.S. Fish & Wildlife Service
Art Baggett, Chairman, State Water Resources Control Board
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1 State Water Resources Control Board's (SWRCB) Water Right Decision 1641:

2 10.2.1.2 The Effect of Discharges in the CVP Service Area on Vernalis Salinity

3 Although water quality problems on the San Joaquin River began with the reduction of flows due to upstream
4 development and the advent of irrigated agriculture, they were exacerbated with construction of the CVP.
5 (R.T. pp. 3988, 4781; SDWA 39; SWRCB 1e, pp. II-15, VIII-2.) The CVP consist of 18 federally operated
6 reservoirs and four reservoirs operated jointly with the DWR. (SWRCB 1e, p. III-5, SWRCB 167.) The
7 Delta-Mendota Canal and pumping plant first were began operating in 1951. (SDWA 48, pp. 10-11.) The
8 San Luis Drain and the California Aqueduct were completed in 1967. (SWRCB 167, Technical Appendix,
9 pp. [II-11] - [II-13].) SDWA's witness testified that between 1930 and 1950 the average salt load at
10 Vernalis was 750,000 tons per year. Between 1951 and 1997, the salt load has averaged more than 950,000
11 tons per year. Peak loads have exceeded 1.5 million tons per years following extended droughts. (SWDA
12 34A.) Central Valley RWQCB staff testified that from the 1960s onward there has been an increase in salt
13 load and concentrations. (R.T. pp. 4835-4836.) The April through August salt load in the 1980s was 62
14 percent higher than the load in the 1960s and the corresponding annual load increase was 38 percent.
15 (SWRCB 1e, p. VIII-11; SWRCB 97.)

16 Central Valley RWQCB staff described geographic sources of salinity based on historical data from the 1977
17 through 1997. (R.T. p. 4891.) The Central Valley RWQCB staff concluded that high salinity at Vernalis is
18 caused by surface and subsurface dischargers to the river of highly saline water. The sources of the
19 dischargers are agricultural lands and wetlands. (R.T. pp. 4857-4858; SEWD 17, p. 5.) Approximately 35
20 percent of the salt load comes from the northwest side of the San Joaquin River, and approximately 37
21 percent of the salt load comes from the Grasslands area. (SEWD 7a.) These areas received approximately
22 70 percent of their water supply from the CVP, 20 percent from precipitation and 10 percent from
23 groundwater. (SWRCB 8, p. V-11.) The TDS concentration of agricultural drainage water from the
24 Grasslands area that discharges to the river through Mud Slough is approximately 4,000 mg/l. (R.T. p. 4869;
25 SWRCB 8, p. VIII-27.) In some cases, drainage water is more than ten times the concentration of the
26 Vernalis salinity standard. (R.T. pp. 7850-7851.)

27 Based upon the above discussion, the SWRCB finds that the actions of the CVP are the principal cause of
28 the salinity concentrations exceeding the objectives at Vernalis. The salinity problem at Vernalis is the result
29 of saline discharges to the river, principally from irrigated agriculture, combined with low flows in the river
30 due to upstream water development. The sources of much of the saline discharge to the San Joaquin River
31 is from lands on the west side of the San Joaquin Valley which are irrigated with water provided from the
32 Delta by the CVP, primarily through the Delta-Mendota Canal and the San Luis Unit. The capacity of the
33 lower San Joaquin River to assimilate the agricultural drainage has been significantly reduced through the
34 diversions of high quality flows from the upper San Joaquin River by the CVP at Friant. The USBR, through
35 its activities associated with operating the CVP in the San Joaquin River basin, is responsible for significant
36 deterioration of water quality in the southern Delta. (Source: D-1641, pp. 82, 82, and 84.)

37 Drainage problems in the San Joaquin Valley threaten water quality, agriculture, fish and wildlife, and
38 public health. (SWRCB 7e.) Although current drainage programs will, in the short-term, assist in meeting

To: Regional Director, U.S. Fish & Wildlife Service
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Nov. 14, 2002 6

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Re: Formal Request that the U.S. Fish and Wildlife Service Pursue Administrative Relief Through the Central Valley Regional Water Quality Control Board and the State Water Resources Control Board to Compel the U.S. Bureau of Reclamation et al to Cease Violating the Selenium Objective for the Wetland Channels, a source of water for the San Luis National Wildlife Refuge Complex, CA., Which Threatens Public Trust Resources and Permitted Water Right Usage

1 *the Vernalis salinity objective, a long-term solution for drainage management must be developed. (Source:*
2 *D-1641, p. 86.)*

3 *The USBR's actions have caused reduced water quality of the San Joaquin River at Vernalis. Therefore,*
4 *this order amends the CVP permit under which the USBR delivers water to the San Joaquin basin to*
5 *require that the USBR meet the 1995 Bay-Delta Plan salinity objectives at Vernalis. The USBR has wide*
6 *latitude in developing a program to achieve this result. (Source: D-1641, p. 87.)*

7 *High concentrations of naturally occurring elements, such as selenium, may pose a hazard to wildlife and*
8 *humans when agricultural drainage is discharged to wetlands or water courses. Salt imported by water*
9 *deliveries, accumulation of natural salts in soils and groundwater from irrigation, and lack of a viable long-*
10 *term salt management plan threaten sustained agriculture in the Valley.*⁷ [Emphasis added.]

11 **USBR Has Failed to Develop a Viable Long-Term Solution to Its Self-Imposed Drainage Dilemma:** The USBR has
12 yet to come forth with a viable long-term solution to the drainage dilemma. The GBP is nothing less than a selenium/salt
13 banking project, which, the record shows, actually compounds salt and selenium downloading during and subsequent to
14 drought periods. Currently, the USBR is circulating an Administrative Draft report in "response" to Judge Wanger's "Decision"
15 which among other things required that the USBR provide a preferred alternative drainage solution by December 2002. P&A's
16 recent contact with USBR's Public Affairs spokesperson Marian Echeverria confirmed that the scheduled report does not
17 identify the preferred drainage alternative. The fact is that it is simply a "reiteration" on all of the age-old alternatives that
18 heretofore have been recognized as problematic.

19 P&A also submitted comments on the USBR's San Luis Drainage Feature Re-evaluation & EIS,⁸ The following are excerpts:

20 As stated in *Porgans & Associates* (P&A) November 10, 2001 fax to Mike Delamore, USBR, Fresno Office, herein
21 is the addendum to the comments referenced in that correspondence.

22 **Concerns:** In one sense, P&A is encouraged to know that the government is still interested in the unresolved self-
23 imposed drainage dilemma it created in conjunction with its federal Central Valley Project water contractors. It is a
24 problem that had been well documented by more than 100 years of research, supported by real science and hard
25 data/publications. It is a problem that was identified even before the construction of the initial CVP and San Luis Unit
26 of the project. Ironically, as both the USBR and its contractors knew, in the case with the San Luis Unit, the San Luis
27 Drain was suppose to be built in unison with the water deliveries, because of the known drainage problems within the
28 San Luis Unit (Westland Water District) service area. But paraphrasing one of WWD's initial General Managers,
29 Ralph Brody, there was no real concern about the San Luis Drain (SLD) being built early on, just deliver the water and
30 the drainage facilities would come well before they were really needed.

⁷ San Joaquin Valley Drainage Implementation Program, Manucher Alemi, SJVDMP Coordinator, Department of Water Resources, February 1998, p. 1.

⁸ P&A Written Comments to USBR's Jason Phillips, Project Manager, San Luis Drainage Feature Re-evaluation & EIS, Drainage Options as Directed by U.S. District Court. Subject: P & A's Public Comments - Addendum to November 10, 2001 San Luis Drainage Feature Re-evaluation & EIS --- Public Scoping Meeting, November 2001.

To: Regional Director, U.S. Fish & Wildlife Service
Art Baggett, Chairman, State Water Resources Control Board
Chairman, Central Valley Reg. Water Quality Control Board

Nov. 14, 2002

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From: Patrick Porgans & Associates

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Re: Formal Request that the U.S. Fish and Wildlife Service Pursue Administrative Relief Through the Central Valley Regional Water Quality Control Board and the State Water Resources Control Board to Compel the U.S. Bureau of Reclamation et al to Cease Violating the Selenium Objective for the Wetland Channels, a source of water for the San Luis National Wildlife Refuge Complex, CA., Which Threatens Public Trust Resources and Permitted Water Right Usage

Unfortunately, the perquisite for the USBR's renewed interest in the drainage issues is not an agency-inspired phenomenon, but the result of a court order. Albeit, it would be disingenuous if P&A did not reflect on the FACT that the USBR has had nearly a half of a century to effectively remedy the self-induced drainage problem. It is a problem that USBR has not only failed miserably to reconcile, but, conversely the record proves its actions have and continue to compound the drainage dilemma, which, in some areas of the state, is at or approaching critical mass. Testimony obtained during P&A's cross-examination of two California Central Valley Regional Water Quality Control Board engineers, "experts" in agricultural drainage, during the SWRCB's Bay-Delta "Water Rights" hearings, revealed drainage is doubling the salt loads every five years in the San Joaquin Valley serviced by a portion of the CVP.

Conflict of Interest: The official government records attest to the fact that the salt deposition problems in the San Joaquin Valley are worst now than ever; i.e., Bureau's water deliveries are responsible for doubling the salt load in portions of the San Joaquin Valley every five years; the San Joaquin River is classified as water quality impaired; the Bay-Delta is water quality impaired, the San Joaquin Valley, according to the U.S. Environmental Protection Agency's Watershed Index, appears to be the single largest contiguous high water quality vulnerable area in the United States, and the long-term solution to the drainage problem is yet to surface. (Refer to Attached map.) During the last 30 years, P&A has committed its time and resources in a sincere effort to assist the "responsible" government agencies in fulfilling their respective public trust responsibilities to resolve the drainage conundrum. Suffice it to say the government has not only resisted P&A's efforts, it, including the USBR, has exacerbated the problem.

Potential Solutions According to USBR "Fact Sheet:"

Since the 1960's, Reclamation has investigated ways to provide drainage service to the western San Joaquin Valley. From the 1980s to present, while in-valley and out-of-valley options were being studied, Reclamation has worked with other Federal agencies, California state agencies, growers, water districts and other stakeholders to develop effective, affordable, and feasible drainage service and drainage management solutions. Several of these efforts have resulted in innovative techniques, and Reclamation continues to support development of these approaches. However, to date, the only proven technologies identified to provide large-scale, long-term drainage service and achievable salt balance on drainage-affected, irrigated lands in the San Joaquin Valley are disposal of salts out-of-valley or disposal to in-valley evaporation ponds. The final range of alternatives will likely include a combination of water treatment (evaporation, chemical, biological, other) in-valley or out-of-valley disposal. [Emphasis added.]

Standing Opposition to USBR's Long-term Drainage Solutions:

P&A, in conjunction with the U.S. Fish & Wildlife Service's (USFWS) position, takes exception to the USBR's assertion that evaporation ponds are a proven technology. The USBR's position would have to completely ignore all of the "real" scientific data that documents the adverse environmental costs directly attributable to evaporation ponds. In the interest of time and resources, P&A respectfully refers the USBR to the historical records, wherein, P&A's, the USFWS and other agencies recorded their respective concerns and opposition to the use and/or expansion of evaporation ponds as an in-valley solution or out-of-valley solutions that involve the dumping of agricultural drain water into any water body that drains/empties into the Sacramento-San Joaquin Delta and/or San Francisco Bay Estuary.

Competency of USBR: P&A's extensive, if not exhaustive review of the record, reveals that one of the primary obstacles impeding any meaningful commitment and/or resolution to reconciling the self-imposed drainage problem is the USBR. The record further attest to the USBR's inability. P&A respectfully suggests that what really needs to be "re-evaluated" is the

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To: Regional Director, U.S. Fish & Wildlife Service
Art Baggett, Chairman, State Water Resources Control Board
Chairman, Central Valley Reg. Water Quality Control Board

From: Patrick Porgans & Associates

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Re: Formal Request that the U.S. Fish and Wildlife Service Pursue Administrative Relief Through the Central Valley Regional Water Quality Control Board and the State Water Resources Control Board to Compel the U.S. Bureau of Reclamation et al to Cease Violating the Selenium Objective for the Wetland Channels, a source of water for the San Luis National Wildlife Refuge Complex, CA., Which Threatens Public Trust Resources and Permitted Water Right Usage

1 USBR's performance and more aptly stated, lack of performance. There have been a plethora of studies, countless meeting,
2 endless proposals, concepts and drainage related theories that defy the principles of sound science, common sense and
3 practicality; however, in spite of a massive expenditure of public funds, time and resources, to this day there is still no remedial
4 solution in sight. One needs to question whether this state of affairs is an enigma, bureaucratic ineptitude or an unresolvable
5 issue rooted in a problematical venture built with the so-called best of intentions, essentially to irrigate desert lands with known
6 unresolvable drainage problems.

7 **Continued Destruction of Public Trust Resources and Unreasonable Use of the Public's Water Resources:**

8 The "Re-evaluation of the San Luis Drain" if it includes in-valley and/or out-of-valley "solutions" constitutes an unreasonable use
9 of the public's water and a definite threat to public trust resources. As the record will attest, P&A also has formally stated its
10 opposition to the USBR's Grassland Bypass Project (GBP), which utilizes a portion of the San Luis Drain, for discharging
11 drainage water into Mud Slough, a tributary to the San Joaquin River. For all of its "so-called achievements" the GBP has not
12 done away with the toxic trace elements and/or salts contained within the SJV hydrological area: they are simply being banked
13 and stored in the soil profile and in the affected groundwater basin. The data show that the dividends on the salt load within
14 the SJV are doubling every five years. The most condemning commentary on the merits of the GBP were published by the
15 USBR, in an addendum/correction, to Chapter 6 of the *Grasslands Project 1998-99 Annual Report*, and I quote: "*Data for several*
16 *more years will be necessary before the impact of the Grassland Bypass Project can be quantified with any confidence.*" As you know
17 the aforementioned addendum/correction to that report was not a voluntary concession by the USBR; it was compelled to take
18 this action as a means to assuage legitimate concerns regarding the report, raised by the U.S. Geological Survey (USGS).

19 **Concerns Raised in a Recently Published U.S. Geological Report Regarding Toxic Agricultural Drainage:**

20 In a USGS recently published a report, "*Forecasting Selenium Discharges to the San Francisco Bay-Delta Estuary: Ecological*
21 *Effects of A Proposed San Luis Drain Extension*," it states:

22 *"Understanding the biotransfer of Se is essential to evaluating the fate of proposed changes in Se*
23 *dischargers to the Bay-Delta.. However, past monitoring programs have not addressed the specific*
24 *protocols necessary for an element that bioaccumulates.Any future analysis of impacts from Se*
25 *discharges via the SJR or a proposed SLD extension to the Bay-Delta should be at least as complete and*
26 *could profitably build from the framework presented here. For the Bay-Delta, this new tool is used in site-*
27 *specific forecasts to evaluate Se effects based upon the major processes leading from loads through*
28 *consumer organisms to predators. We conclude that credible protective criteria needs to be applicable to*
29 *vulnerable food webs and to be based on contaminant concentrations in sources such as particulate*
30 *materials that most influence bioavailability. Bivalves appear to be the most sensitive indicator of Se*
31 *contamination in the Bay-Delta.*

32 **Constitutional Conflict - Unreasonable Use of Water:**

33 It is imperative that the USBR should remain cognizant of the fact that it only has a right to use the water and that the amended
34 terms and conditions of its water right permits as defined in SWRCB Decision 1641, requires that the USBR find long-term
35 solutions to the agricultural drainage water problems. At many of the USBR's meeting there appears to be an outright aversion
36 by its personnel to discuss and/or disclose the extent of the threat that drainage poses to our civilization and/or the history of
37 salt deposition and its devastating impacts on past civilizations, i.e., the Tigris and Euphrates valleys. P&A respectfully reminds
38 the USBR and its collaborators that, it has been written, and I paraphrase, those who fail to understand history are doomed
39 to repeat its mistakes. Neither the USBR nor its contractors should be slighted for their "good intentions." Conversely, they
40 need to be held accountable for a litany of good intentions that have and continue to contribute to the demise, waste, and
41 destruction of public trust resources.

To: Regional Director, U.S. Fish & Wildlife Service
 Art Baggett, Chairman, State Water Resources Control Board
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From: Patrick Porgans & Associates Hand Delivered

Re: Formal Request that the U.S. Fish and Wildlife Service Pursue Administrative Relief Through the Central Valley Regional Water Quality Control Board and the State Water Resources Control Board to Compel the U.S. Bureau of Reclamation et al to Cease Violating the Selenium Objective for the Wetland Channels, a source of water for the San Luis National Wildlife Refuge Complex, CA., Which Threatens Public Trust Resources and Permitted Water Right Usage

1 CVP Capital Costs Repayments During the Last 50 Years are Less than Total Drainage Related Costs:

2 According to a May 2001 USBR "Cost Allocation Study" report, the outstanding capital debt on the CVP was approximately
 3 \$3.3 billion, of which the irrigation water users' cost allocation is approximately \$1,476 billion. Furthermore, according to draft
 4 figures obtained from USBR accountants, which are contained in the USBR's Fiscal 2002 Water Rate Book, in nearly a half
 5 of century the irrigation water users have only repaid about \$104 million towards the capital debt, which does not contain an
 6 interest component, which averages out to \$2 million annually!!! Ironically, the costs for the Kesterson National Wildlife Refuge
 7 cleanup fiasco and the related drainage studies and reports exceed the total capital cost repaid to date by all of the CVP's
 8 agricultural contractors.

9 **Conclusions:** Any reasonable person accustomed to dealing with reality cannot categorically deny the validity of the
 10 aforementioned facts, but for the sake of discussion, let us not quibble about the seriousness and/or gravity of the
 11 abovementioned factors, as they are only symptomatic of the real problem. The drainage dilemma is problematic and will
 12 continue as a result of the USBR's unconscionable action to supply water to its customers to irrigate lands with known drainage
 13 problems without having a viable long-term cost-effect drainage solution in place. The re-evaluation of the SLD and/or the
 14 extension of the GBP is nothing more than delay tactics that will inevitably be at the cost and to the demise of public
 15 and the trust resources, i.e., SJR, Trinity River and the Bay/Delta estuary. The GBP EIS/EIR failed to disclose the
 16 bioaccumulative impacts of the project on the San Joaquin River and the Estuary and the real economic costs and
 17 factors associated with the CVP subsidized water deliveries to promote unsustainable agriculture and/or its impact
 18 on sports and commercial fishing.

19 The USBR has referred to the "re-evaluation" of the "drainage alternatives"⁹ as an iterative process, which, according to the
 20 literal interpretation, means characterized by repetition. P&A concurs that this process has been both repetition and draining.
 21 In FACT, P&A is not amenable to "participating" in a reiterate process. Albeit, for the record, this is P&A's final position.

22 No more irrigating desert lands in proximity to seleniferous soils.

23 No Drain.

24 No more evaporation ponds.

25 No more water deliveries that conflict with the constitutional reasonable use requirements.

26 No more studies.

27 No more water to lands with known selenium and/or salt deposition problems.

28 No more exceedences of selenium objectives in wetland water supply channels.

29 No more interference from the USBR.

30 No more USBR as lead agency; i.e., no more conflict of interests.

31 No more excuses or unaccountability.

⁹ USBR. San Luis Drainage Feature Re-Evaluations, Sept. 2002.

To: Regional Director, U.S. Fish & Wildlife Service
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Nov. 14, 2002

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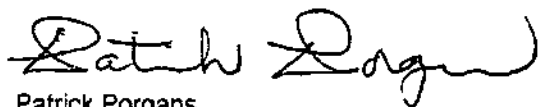
From: Patrick Porgans & Associates

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Re: Formal Request that the U.S. Fish and Wildlife Service Pursue Administrative Relief Through the Central Valley Regional Water Quality Control Board and the State Water Resources Control Board to Compel the U.S. Bureau of Reclamation et al to Cease Violating the Selenium Objective for the Wetland Channels, a source of water for the San Luis National Wildlife Refuge Complex, CA., Which Threatens Public Trust Resources and Permitted Water Right Usage

1 **Reiteration of P&A's Request for the USFWS to Pursue Formal Administrative Action:** Because of the USBR and
2 its contractors inability and/or failure to comply with the wetland channels selenium standards/objectives and/or failure to
3 resolve the long-term drainage problems within the CVP service area, it leaves P&A with no other practical alternative but to
4 request that the USFWS initiate formal administrative action against the USBR and its contractors, to ensure that the Service
5 does not continue to compromise its ability perform its public trust responsibilities in accordance with its legal mandates.
6 In the absence of such an action by the USFWS, P&A will then consider petitioning the SWRCB to take an action against the
7 USBR for violating USFWS's permitted water right for the wetland channels. Should you have any questions regarding the
8 contents of this communication, please advise us in writing. Thank you.

9 Respectfully,



10 Patrick Porgans
11 Defacto Public Servant
12 PP:sp @3@fmlusbr./wetlandviolations

13 cc: List Attached

PATRICK PORGANS & ASSOCIATES, INC.



Tele: (916) 374-8197 Fax: 372--7679

P.O. Box 1713, W. Sacramento, CA 95691

February 27, 2003

Kirk C. Rogers, Regional Director
 Bureau of Reclamation (BOR), Mid-Pacific Region Office
 2800 Cottage Way
 Sacramento, CA 95825

(Original Sent Via U.S. Mail)

Fax No: (916) 978-5114

Re: Followup Comments from the U.S. Bureau of Reclamation's Jan. 31, 2003 Public Scoping Meeting on
 the San Luis Drainage - Feature Re-evaluation -- Plan Formulation Report, Dec. 2002

Attn: Jason Phillip, BOR, Project Manager, SLD Feature Re-evaluation

Porgans & Associates (P&A), Inc., has a longstanding (30 year) interest and commitment to resolve the Bureau of Reclamation's (BOR) and its Central Valley Water contractors' self-imposed drainage dilemma. P&A correspondences and participation is a matter of record and are contained in BOR files. As you know, P&A submitted comments to BOR pertinent to its *San Luis Drainage Feature Re-evaluation Plan Formulation Report*, and also attended the Jan. 31, 2003, Public Scoping meeting held at the Mid-Pacific Regional Office. In addition, over the last 30 years, P&A has expended vast sums of its monetary resources and time as a good-faith gesture to work with BOR and other government agencies to reconcile this tax-draining fiasco. It is with all due respect that P&A offers, for the record, the following comments and/or findings.

General Comments/Findings: The preferred alternative and related gibberish* contained in BOR's \$3.4 million *San Luis Drainage Feature Re-evaluation Plan Formulation Report*, is an affront to the taxpayer and a real threat to the State's public trust resources. Albeit, it is yet another testament to BOR's ability to expend vast amounts of funds, generate voluminous non-substantive reports, re-invent the wheel in a non creative recitative manner, while reaffirming its innate inability to reconcile its monolithic self-imposed drainage dilemma, consistent with BOR induced calamity, which is diametric to natural phenomenon, common sense and/or the public's interest. Land retirement was not considered formally in the alternative scenario and that this is a fatal flaw, land retirement should be equivalent to drainage service and should be considered as a primary alternative. Perhaps BOR by happenstance overlooked the need for a biological assessment component/monitoring is lacking and/or does not appear to be blatantly evident. In this regard USFWS could be called upon as a prime "pitch-hitter" as a "REAL" team player. On the water/money related issues, P&A urges BOR to get in on the ground floor and take the lead to have all water realized from the re-evaluation efforts be taken away from WWD and set aside in a water retirement program. Furthermore, ALL funds derived from said water retirement program should be used for the purpose of retiring the outstanding capital debt of the CVP and/or used for enhancement of public trust resources that BOR et al has been responsible for destroying.

The proposed "plan" of establishing 5000 acre of evaporation ponds is a recipe for a mega environmental catastrophe, which, if carried out, will be the "Father of ALL Kesterson's." The "plan" features concentrating and making more toxic drain water that will be disposed in the evaporation ponds.

The BOR's proposed preferred alternative in its Re-evaluation Plan Formulation Report of an "in-valley" solution is inconsistent with the California State Water Resources Control Board's directive for an "out-of-valley" drain, which had yet to be reconciled. The *San Luis Drainage Feature Re-evaluation Plan Formulation Report*, and its proposals does not take advantage of the recommendations contained in the BOR's \$50 million plus "Rainbow Report."

* Definition of Gibberish: Esoteric; Formulaic; Unintelligible; Foolish talk; etc.

Specific Comments Relative to BOR's Conflicting Roles:

Kirk C. Rogers, Regional Director, Mid-Pacific Region Office

February 27, 2003

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Re: Followup Comments from the U.S. Bureau of Reclamation's Jan. 31, 2003 Public Scoping Meeting on the San Luis Drainage - Feature Re-evaluation -- Plan Formulation Report, Dec. 2002

Attn: Jason Phillip

1. The primary factor obstructing resolution to the self-induced drainage dilemma is attributable to BOR's dual role as water purveyor and "public trustee." The records substantiates the fact that BOR and its contractors are equally responsible for creating, perpetrating and perpetuating the area-wide drainage disaster.
2. It is essentially preposterous to place even the slightest degree of confidence in BOR to effectively reconcile the drainage conundrum, recognizing that its 50-year attempt to implement a cost-effect and environmentally sound solution to its self-induced drainage conundrum has costs the taxpayers hundreds of millions of dollars, countless studies, endless meetings, is replete with absolute failure, incomprehensible destruction to listed and endangered fish and wildlife species, unimaginable catastrophes, and absolutely no sane solution on the distant horizon, with the exception of the yet-to-be created Father of ALL Kesterson's (5000 acres of evaporation ponds). It is egregious that 20 years after the Kesterson Reservoir debacle, BOR has the impudence to suggest to the public a plan to expand the use of evaporation ponds with its in-valley "alternative", assume liability for the treatment of highly toxic agricultural drainage water, burden the U.S. taxpayers with another \$964 million to treat approximately one-half of the contaminated acreage within the Westland Water District (WWD), serviced by BOR's Central Valley Project (CVP).
3. As stated during the Jan. 31 Public Scoping meeting, P&A acknowledges that BOR is in a "catch-22" syndrome; albeit, BOR has to be removed from its inherent duality conflict. It would behoove the public to request Congressional oversight hearings to reconcile this never-ending taxpayers life support system to "sustain" a tax subsidized water delivery system that is the primary cause for the water quality impairment of 120 miles of the San Joaquin River and the infamous characterization of the San Joaquin Valley as a "More Serious Water Quality Problem - High Vulnerability" area in the United States.¹
4. It is important to remind the newcomers at BOR (Denver Dream Team) that the initial capital repayment obligations for the BOR's agricultural water contractors (which includes CVP agriculturalists) was \$3.4 billion of which 47 percent was reduced because of their so-called "inability to pay."² Furthermore, the outstanding capital repayment obligation for the BOR agricultural contractors is in excess of \$1.4 billion. It is extremely difficult to make sense out of BOR logic, that in spite of the fact that billions of dollars have and continued to be expended for the capital component of its water projects. BOR's records attest to the fact that in a period of more than 50 years, the CVP agricultural (irrigation) contractors have only repaid approximately \$111 million in capital costs.³ During that period of time, BOR has delivered more than 100 million acre-feet of water to its agricultural contractors. The capital component repayment of \$111 million is equivalent to an average cost of around \$1.00 per acre-foot of delivered water (exclusive of the operation, maintenance and

¹ U.S. Environmental Protection Agency, National Watershed Characterization, "Index of Watershed Indicators (<http://www.epa.gov/surf>), June 30, 1997.

² U.S. General Accounting Office, Report to the Ranking Minority Members, Committee on Resources, House of Representatives, Bureau of Reclamation: *Information on Allocation and Repayment Costs of Constructing Water Projects*, July 1996, p. 3.

³ U.S. Bureau of Reclamation. Central Valley Project, *2003 Irrigation Water Rates, Schedule of FY 2001 Irrigation Results of Operations and Contractors Net Position at September 30, 2001*, 2003, p. 8 of 8.

Kirk C. Rogers, Regional Director, Mid-Pacific Region Office

February 27, 2003

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Re: Followup Comments from the U.S. Bureau of Reclamation's Jan. 31, 2003 Public Scoping Meeting on the San Luis Drainage - Feature Re-evaluation -- Plan Formulation Report, Dec. 2002

Attn: Jason Phillip

~~transportation costs.) Please be advised that these numbers are on the conservative side. In light of those and other factors, it is extremely disconcerting that BOR would have the audacity to burden the taxpayers with an additional \$964 million for drainage cleanup, and, at the same time, want to accept the responsibility for clean-up of the WWD's toxic drainage water! Back during the Kesterson I debacle, attorneys for the Interior Department acknowledged the potential of criminal liability for the destruction of wildlife resources, which appears to have been a factor in the federal government shutting the SLD and cleaning up Kesterson. In the event BOR take "liability" for the 5000 acres of evaporation ponds and the treatment facilities, would it still be liable for destruction of public trust resources?~~

5. P&A's cursory review of the files indicate that BOR's track-record is second to none for the destruction of public trust resources, degradation of the surface and ground waters of the State of California, proliferation of endless and non-effective studies, and continued waste of taxpayers money in order to protect the vested interests of both it and its respective water contractors. P&A could not find one instance in which BOR was held accountable for the death and/or destruction, listing and/or taking of endangered species pertinent to the construction and/or operation of the CVP. Furthermore, BOR had never been cited for violating its water quality standards obligations related to its California State Water Resources Control Board (SWRCB) water right permits, despite the fact that it was involved in over 200 violations and the illegal export and/or impoundment of more than 300 thousand acre-feet of water during the State's 1987-1992 drought. The SWRCB estimated the value of the water at around \$29 million.

Examples:

- A. In the late 1980's and early 1990s, the USBR illegally exported hundreds-of-thousands acre-feet of water from the Delta, in violation of the terms and conditions of its water right permits.⁴ SWRCB's Exhibits 19 and 20, (Summary of Recent Decision 1485 Violations), documented over 200 days of violations between Water-Year 1988 through Water Year 1992. (Refer to Attachments.) The SWRCB's record also states that the USBR and the California Department of Water Resources (DWR), collectively illegally impounded and/or exported approximately 325,000 acre-feet of water during that period, valued at \$29,000,000.00. P&A's fought for three years to have the SWRCB hold that hearing to hold the USBR and DWR accountable for violating the terms and conditions of their respective water right permits. Albeit, the SWRCB held the hearing, documented the water quality violations of their respective water right permits and the illegal water export, but opted not to take an enforcement action against either the USBR or DWR. The records also prove that the governments' illegal water exports contribute greatly to the decline, massive destruction and subsequent listing of certain aquatic species as endangered. Ironically, the USBR was not cited for the destruction and/or "take" of the fisheries, as is normally required by the provisions of the federal Endangered Species Act.
- B. The San Luis Unit of the CVP supplies water to the Westland Water District (WWD). The WWD is the single largest water district in the United States. In the 1980's WWD was the source of the selenium-laden agricultural drainage return flows responsible for the destruction of tens-of-thousands of migratory birds at the Kesterson National Wildlife Refuge. The Kesterson debacle was the subject of a SWRCB hearing/decision (WQ 85-01), that was promulgated not by a government entity, rather via a petition by a private citizen, who

⁴ Public Hearing, State Water Resources Control Board, Division of Water rights, Public Hearing, Subject: Consideration of Compliance with Water Right Requirements for the Sacramento-San Joaquin Delta and Suisun Marsh, Nov. 20, 1992.

Kirk C. Rogers, Regional Director, Mid-Pacific Region Office

February 27, 2003

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Re: Followup Comments from the U.S. Bureau of Reclamation's Jan. 31, 2003 Public Scoping Meeting on the San Luis Drainage - Feature Re-evaluation -- Plan Formulation Report, Dec. 2002

Attn: Jason Phillip

appealed a CVRWQCB decision that essentially attempted to downplay the severity of the government-induced selenium-agricultural drainage catastrophe. Ironically, in the SWRCB's Order No. WQ 85-01 issued a Cleanup and Abatement Order to the USBR for Kesterson Reservoir, a 1,280 acre evaporation facility consisting of 12 ponds, requiring appropriate action to mitigate the any nuisance condition caused by the operation of Kesterson Reservoir. However, with the exception of the Cleanup and Abatement Order, there is no record that the SWRCB cited the USBR for violating water quality standards. Ironically, Kesterson and the San Luis Drain were not shut down by the SWRCB, they were closed by an order from the Secretary of the Interior. The USBR was not held accountable for the deaths of those birds as it was not pursued as a Migratory Bird Treaty Act violation by the USFWS.

- C. The CVRWQCB reports document the fact that the USBR's routinely pumps highly contaminated toxic waste from the collector sumps (averaging 228 ppb selenium) which is automatically discharged from the sumps into the Delta Mendota Canal (DMC); one sump even exceeded California's hazardous waste threshold for selenium (1,000 ppb). However, according to Dennis Westcott, Eng., CVRWQCB the USBR has not been cited for this ongoing hazardous waste discharge into the DMC, a source of water for the wetlands.
- D. In 2002, an estimated 33,000 fish were killed on the Klamath/Trinity River system (some of which are state/federally listed as threatened species) resulting from a USBR water-related management issue. P&A contacted the USBR to ask if it had been cited for the fish kill. USBR's spokesperson said, no, as no one knows who, if anyone, is at fault.
- E. Water deliveries from the CVP are the primary factor contributing to water quality degradation in the wetland water supply channels, a source of water for the SLNWRC, and exceedences of EPA's 2 ppb selenium water quality standard for the protection of aquatic life, including wildlife refuge water supply, which threatens public trust resources and permitted water right usage. According to the CVRWQCB, the USBR has not been cited for violating the 2 ppb selenium standard/objective promulgated to protect aquatic resources.
- F. Evidence given at the SWRCB's Bay-Delta Water Right hearings also attest to the fact that the USBR/CVP are primarily responsible for the "doubling of salt loads every five years" in the SJV resulting from water deliveries and agricultural drainage.

Conclusion: P&A is requesting Congress to direct the General Accounting Office (GAO) to conduct a review of BOR's activities, conflicting roles and unaccountability for expenditures of billions of taxpayers funds and destruction of public trust resources in relationship to SLD. Lastly, P&A is looking forward to a responsive approach by the BOR-Team; i.e., that the comment herein and the attached "flip chart questions and scoping issues" will be reflective in the record and the "deliverables." Thank you.

Respectfully,



Patrick Porgans

cc: Congressman George Miller

Attachments